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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/694,425	10/23/2000	Troy Alan Ussery	OFFW01-00008	1041
7590	06/28/2007	William A. Munck, Esq NOVAKOV DAVIS & MUNCK, P.C. 900 Three Galleria Tower 13155 Noel Road Dallas, TX 75240	EXAMINER SHAH, AMEE A	
			ART UNIT 3625	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/694,425	USSERY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Amee A. Shah	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 April 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

Claims 1-22 are pending in this action.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 9, 2007, has been entered.

### ***Response to Amendment***

Applicant's amendment filed April 9, 2007, has been entered. Claims 1, 11 and 20 have been amended. Claims 21 and 22 are newly added.

### ***Claim Rejections - 35 U.S.C. § 101***

35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 and 20-22 are rejected under 35 U.S.C. §101 because the claimed inventions are directed to non-statutory subject matter.

Claims 1-10 and 20-22 are directed to disembodied data structure claim which are per se not statutory. *C.f. In re Wamerdam.* The preamble of the independent claims 1 and 20 are directed to a system; however, the system is comprised entirely of a database and software, both

of which are disembodied data structured which are not executable by a processor. The examiner suggests redrafting the claims to include some hardware such as a computer or processor.

A claim to a computer readable medium encoded with functional descriptive material that can function with a computer to effect a practical application that results in a useful, concrete and tangible result (i.e. running an assembly line or executing a stock transaction) satisfies Section 101. *See* U.S. Patent 5,710,578 to Beauregard etc., i.e., a set of instructions in combination with a computer system. *C.f. In re Wamerdam* (data structure stored in a computer memory), *and In re Lowery*, 32 USPQ2d 1031 (Fed. Cir. 1994) (data structure in a computer readable medium).

Examples of Statutory Functional Descriptive Material are: (a) a claimed computer-readable medium encoded with a functional data structure – this defines structural and functional relationships between the data structure and the hardware/software components, *see Wamerdam*; (b) a claimed computer-readable medium encoded with a computer program - this defines structural and functional relationships between the computer program and the computer itself which allows the program's functionality to be realized provided that a useful, concrete and tangible result is realized; *see* U.S. Patent 5,710,578 to Beauregard et al.

Data merely stored in a computer readable medium to be read or outputted by a computer without any functional interrelationship, and thus do not impart functionality to the computer, i.e., they are not computer components. Examples of Non-Functional Descriptive Material include music, literature, art, photographs, data base per se, and are directed to neither a “process” nor a “machine,” but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C. 101, which is drafted so as to set forth the statutory classes of invention in the alternative only. *Id.* at 1551.

***Examiner Note***

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. §103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1-5, 8-15 and 18-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Thompson, US 6,393,410 (hereafter referred to as “Thompson”), in view of Kobayashi et al., US 6,275,825 B1 (hereafter referred to as “Kobayashi”).**

Referring to claim 1. Thompson teaches an electronic commerce system for use over a global communications network (i.e., the internet) having company nodes (i.e., the owner of a project such as an architect or contractor) and constituency nodes (i.e., a purchaser such as a contractor or engineer) associated therewith (*see Abstract*); wherein said system comprises:

- a date repository (col. 2, lines 40-45) that is operable to store data files associated with said company nodes, wherein said company nodes populate respective associated data files with company information (i.e., information about the construction projects);
- wherein at least one company node is operable to modify said company information that is stored in said data files (col. 3, lines 46-55 – note the administrative team/user is able to change and update the information); and
- a communications controller (20) that is operable (i) to propagate communications interfaces accessible by said constituency nodes with selected portions of said commercial information (i.e., the construction project) under control of said company nodes (col. 3, lines 29-36), and (ii)gather feedback information (i.e., the response of the sub-contractors) representative of constituency response to said constituency nodes accessing said communication interfaces (col. 4, lines 20-49).

Thompson does not expressly show wherein each set of said company information relates to a specific company that is represented by a specific company node, but rather that the data

Art Unit: 3625

files contain company information relating to construction project presented by the company (col. 2, lines 36-39). However, this difference is only found in the nonfunctional descriptive material stored in the data files is not functionally related to the substrate of the system. The system would perform the functions of storing, modifying, controlling and propagating the data in the same manner regardless of the type of data, whether relating to a company, a project or both. Thus, this non-functional descriptive material will not distinguish the claimed invention from the prior art Thompson in terms of patentability. *See In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowrey*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to utilize the system disclosed by Thompson to store, modify, control and disseminate any type of information in any industry.

Thompson does not expressly show wherein the propagating communication interfaces with selection information in a manner that ensures compliance with one or more governmental disclosure requirements applicable to the companies associated with the company nodes. However, this recitation describes result which follows from the structure recited and does not further limit a previously recited feature, adding nothing to the patentability or substance of the claim. See *Texas Instruments Inc. v. Int'l Trade Comm.*, 26 USPQ2d 1018 (CAFC 1993) and *Minton v. Natl. Assn. Of Securities Dealers, Inc.*, 67 USPQ2d 1614 (CAFC 2003). Ensuring compliance with governmental requirements does not inform on how the propagating is performed, but simply characterizes the results of the information propagated and thus does not further limit the claims.

Art Unit: 3625

Thompson also does not expressly show wherein at least one company node is operable to control when selected portions of company information in said data files are made available to said constituency nodes. However, Kobayashi, dealing with the same problem of access to files, discloses a method and system for controlling access to various features of a software application, including wherein the software controls when selected portions of information in data files are made available to constituency nodes, i.e. controlling access to portions of information contained in databases (*see, e.g.*, Abstract, col. 4, lines 8-31 and col. 10, line 44 through col. 11, line 16).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Thompson to include the teachings of Kobayashi to allow for the ability to control when selected portions of company information in said data files are made available to said constituency nodes. Doing so would allow for authorized users to have access to certain information based on security clearances and the like, while ensuring unauthorized users do not have access.

Referring to claims 2 and 3. Thompson in view of Kobayashi teaches the system of claim 1 that is further operable to process said gathered feedback information (i.e., submitted bids) and, in response thereto, modify one of said data files (Thompson, col. 4, lines 31-49) and to report results of the bidding process to the company node.

Referring to claim 4. Thompson in view of Kobayashi teaches the system of claim 1 wherein the controller, while gathering feedback information, employs mathematical

Art Unit: 3625

representation (i.e., the fundamentals such as binary code upon which computing occurs) to represent at least one of constituency understanding and reaction (i.e., submitted bids) (Thompson, Abstract and col. 3, line 26 which discloses the use of a digitizer).

Referring to claims 5. Thompson in view of Kobayashi teaches the system of claim 1 further comprising a security controller that is operable, with respect to those data files associated with said company node, to limit access to said those data files to designated personnel of said company nodes; i.e., the information is not made public until a supervisor accepts the information (Thompson, col. 3, lines 29-36). Additionally, Thompson also teaches the use of a user authentication system where the use must enter a login ID and password.

Referring to claims 8 and 9. Thompson in view of Kobayashi teaches the system of claim 1 wherein the controller is also operable to store, index, and relate associated portions of said commercial information in the data repository and wherein said commercial information is organized in a manner to be made available to the public or constituency nodes (Thompson, *see Abstract*).

Referring to claims 11-15, and 18-20. All of the limitations in method claims 11-15 and 18-20 are closely parallel to the limitations of system claims 1-5, 8 and 9, analyzed above and are rejected on the same bases.

Referring to claim 21. Thompson in view of Kobayashi teaches the system of claim 1 wherein the communications controller is operable to ensure compliance with the one or more governmental disclosure requirements by fully disseminating the selected portions of the company information to the constituency nodes (Kobayashi, *see, e.g.*, Abstract, col. 4, lines 8-31 and col. 10, line 44 through col. 11, line 16). The recitation on disseminating the selected portions of information in compliance with the one or more governmental disclosure requirements, as discussed above with reference to claim 1, describes result which follows from the structure recited and does not further limit a previously recited feature, adding nothing to the patentability or substance of the claim. *See Texas Instruments Inc. v. Int'l Trade Comm.*, 26 USPQ2d 1018 (CAFC 1993) and Minton v. Natl. Assn. Of Securities Dealers, Inc., 67 USPQ2d 1614 (CAFC 2003). Ensuring compliance with governmental requirements does not inform on how the disseminating of information is performed, but simply characterizes the results of the information disseminated and thus does not further limit the claims.

**Claims 6, 7, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Kobayashi, as applied to claims 1 and 5, and further in view of Holzrichter et al., US 5,729,694 (hereafter referred to as “Holzrichter”).**

Referring to claims 6 and 7. Thompson in view of Kobayashi discloses the systems of claims 1 and 5 wherein the system includes a security controller, but does not disclose wherein the controller includes an interactive voice recognition to identify designated personnel and wherein the controller translates selected portions of the information from a first language into a

second language. Holzrichter, addressing the same problem, teaches the use of speaker identification, language-of-speech identification, and speech translation (*see, e.g.*, Abstract).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Thompson in view of Kobayashi to include the teachings of Holzrichter to allow for the ability to use an interactive voice recognition to identify designated personnel and to translate selected portions of the information from a first language into a second language. Doing so would allow for the capability of data being accessed by those denied use of their hands and thereby precluded from using a conventional computer terminal.

Referring to claims 16 and 17. All of the limitations in method claims 16 and 17 are closely parallel to the limitations of system claims 6 and 7, analyzed above and are rejected on the same bases.

**Claim 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over Thompson in view of Kobayashi, as applied to claim 1, and further in view of Applewhite et al., US 6,711,575 B1 (hereafter referred to as “Applewhite”).**

Referring to claim 22. Thompson in view of Kobayashi teaches the system of claim 1, as discussed above, but does not specifically teach wherein the communications controller is operable to control when the selected portions of company information are made available to the constituency nodes by allowing multiple versions of a single data file to be stored in the data repository and refraining from propagating the company information in the data file to the constituency nodes until one of the company nodes indicated that a specific version of the data

file is ready for distribution. Applewhite, in the same field of endeavor and/or pertaining to the same issue, teaches a method and system for providing controllable access to information contained in databases by controlling when the information is made available to certain nodes by allowing multiple versions of a single data file to be stored in the data repository and refraining from propagating the company information in the data file to the constituency nodes until one of the company nodes indicated that a specific version of the data file is ready for distribution (e.g. col. 4, lines 47-62 and col. 7, line 50 through col. 8, line 11).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Thompson/Kobayashi to include the teachings of Applewhite to allow for allowing multiple versions of a single data file to be stored in the data repository and refraining from propagating the company information in the data file to the constituency nodes until one of the company nodes indicated that a specific version of the data file is ready for distribution. One of ordinary skill in the art would have been motivated to do so based on the suggestion taught by Applewhite that doing so would control access to information to exclude access to sensitive information by individuals without right to the information while allowing access to those portions of information to those individuals with rights (col. 2, lines 16-22 and col. 8, line 60 through col. 9, line 8).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogesh C. Garg can be reached on 571-272-6756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

June 18, 2007



YOGESH C. GARG  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600